

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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B & R SUPERMARKET, INC., d/b/a MILAM'S MARKET, a Florida corporation, et al., Individually and on Behalf of All Others Similarly Situated,	X	Case No. 1:17-cv-02738-MKB-JO
	:	<u>CLASS ACTION</u>
	:	
	:	<b>JOINT STATUS REPORT</b>
	:	<b>Conference Date: November 1, 2018</b>
VISA, INC., a Delaware corporation, et al.,	:	
	:	
Defendants.	X	

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Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs") and defendants Mastercard International Inc. ("Mastercard"), Discover Financial Services ("Discover"), Visa Inc. and Visa U.S.A. Inc. (together, "Visa"), and American Express Company ("AmEx") (collectively, "Defendants") respectfully submit this joint report in advance of the status conference scheduled for November 1, 2018. The parties agree that there are no issues ripe for discussion with the Court and respectfully request to cancel the November 1 status conference.

**I. PENDING MOTIONS**

**Plaintiffs' Renewed Motion for Class Certification.** Judge Brodie entered an order denying Plaintiffs' motion for class certification without prejudice. (Dkt. No. 644.) Plaintiffs served their renewed motion for class certification ("renewed motion") on July 16, 2018. Pursuant to the Court's August 21, 2018 amended scheduling order, Defendants' response was due October 19, 2018, and Plaintiffs' reply was due November 19, 2018. (*See* Dkt. No. 660.) After the service of Plaintiffs' renewed motion, AmEx informed Plaintiffs of an inadvertent error that resulted in documents being omitted from AmEx's document review pool. AmEx is

currently reviewing those documents for responsiveness and anticipates producing any additional, non-privileged documents on a rolling basis beginning at the end of this week. As explained in AmEx's recent letter to the Court (Dkt. No. 671), after AmEx completes its production, the parties will meet and confer regarding how much time the other parties will require to review the entirety of AmEx's production and Plaintiffs' assessment on whether the newly produced documents will require any additional discovery, expert work or amendments to Plaintiffs' renewed motion. In light of this development, the parties requested that the Court suspend briefing on the renewed motion. (*Id.*) On October 17, 2018, the Court entered an order terminating the renewed motion without prejudice to reinstatement and directing the parties to submit a proposed schedule when the parties agree that they are prepared to resume briefing.

**Discover's Motion to Compel Arbitration.** In light of the Court's denial of Plaintiffs' motion for class certification on March 11, 2018, (Dkt. No. 611), and consistent with Discover's position as set forth in previous Joint Status Reports, it is Discover's position that it is proper to wait until Plaintiffs have filed a renewed motion for class certification and the Court has decided that motion before moving to compel arbitration against the approximately 1,200 putative class members with which Discover has valid, enforceable arbitration agreements.

## **II. CASE SCHEDULE**

**Amended Case Schedule.** On August 20, 2018, the parties jointly requested that the current case schedule be amended to extend the briefing on Plaintiffs' renewed motion for class certification and the deadline for Plaintiffs' merits expert reports. (Dkt. No. 659.) The Court granted the parties' request on August 21, 2018. (Dkt. No. 660.) As described above, Plaintiffs' renewed motion for class certification has been terminated without prejudice to reinstatement. After review of AmEx's additional document production, the parties anticipate requesting an amended case schedule at that time.

### III. STATUS OF DISCOVERY

**Defendants' Production of Transaction Data.** In early 2018, Plaintiffs requested that Defendants provide transaction data for the time period through and including September 30, 2017. After a lengthy meet and confer process, Visa, Mastercard, and Discover largely agreed to produce specific data as requested and American Express agreed to supplement its prior production of the transaction data for a sample of merchants and produce a series of monthly reports that reflect FLS chargebacks in an aggregate form. Mastercard and Discover completed their productions prior to the filing of the renewed motion for class certification. Visa and American Express completed their productions later that month. Plaintiffs intend to meet and confer further with American Express regarding the production of further transaction data.

**Additional Fact Discovery.** As set forth in AmEx's recent letter (Dkt. No. 671), upon the completion of the document review by all parties, the parties have agreed to meet and confer as to whether and what additional fact discovery may be necessary.

**Third-Party Discovery.** During the fact discovery period, Plaintiffs issued subpoenas to numerous third parties, including those that Plaintiffs believe have served as acquirers and/or processors with respect to merchant transactions identified in Defendants' production of transaction data. To date, Plaintiffs have received all anticipated third party data productions.

Respectfully submitted this 25th day of October, 2018, by:

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered parties and attorneys of record.

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